East Asian Discrimination in Supreme Court Cases: How Yesterday's Biases Affect Race Relations Today

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Literature Review

The Supreme Court case rulings and exclusionary laws involving East Asians have shown a great deal of bias throughout American history. There has always been a group blamed for American ills in contemporary times, and East Asians were simply one more minority that received this negative attention and was oppressed throughout American history. East-Asians represent a significant minority group in the United States that continues to grow in population. Many of them came over during the early Gold Rush era, while others immigrated to the West Coast in search of jobs and an increased sense of freedom. They faced many hardships (not excluding "yellow peril" stereotypes) and prejudices against their heritage because of their physical differences, language barriers, religious, and cultural customs. A large majority of them first settled in San Francisco, and later migrated to other areas of the West Coast, before moving inland and dispersing throughout the country.

Many East Asians have been proud to express their heritage, yet the United States (U.S.) was not prepared to accommodate them and could not initially find a place for them. Often, other groups in the surrounding areas felt threatened by these new immigrants who looked and acted different from the previous émigrés to the U.S. The greatest threat felt by European Americans was the fear of job loss. Because the new immigrants were not European and did not assimilate as easily as other populations, laws were passed that restricted their freedoms. Their cultural identity was not only emphasized to a large degree, but several cases pointed to the fact that many did not want them around and felt that East Asians were simply un-American in nature and would never fit in. There were riots, discriminatory laws against them, and other restrictive measures; all designed to discourage them from settling in this country.

Much of the literature focuses on those Supreme Court cases and policies that made a large impact on the communities and immigration rights of Asian Americans. The Chinese Exclusion Act is one of the specific policies that will be highlighted throughout this paper. Additionally, there is a plethora of literature that focuses on the biases that led to the internment of Japanese Americans during World War II. The early days of American history tends to be filled with a certain amount of anger towards Asians, as illustrated in Robert Chang's research. Asians were perceived as taking away American jobs, which somehow gave Americans of European background the idea that they would take over the country, make it corrupt, and change the face of it from what the founders originally intended.[1]

The court cases cited during this time of paranoia and fear include the 1898 case of *United States v. Wong Kim Ark*, where an American-born citizen who made several trips to China was detained by U.S. immigration authorities (under the Chinese Exclusion Act) on the grounds that his parents were Chinese citizens and subjects of the Emperor of China thus making him a subject of the Emperor as well. This case was later overturned on the grounds that subjects born of parents who are permanently residing in the U.S. become citizens.[2] Likewise, Gabriel Chin explained the 1893 case of *Fong Yue Ting v. United States*, which involved the challenge of a federal statute, which specifically required that Chinese non-citizens register or risk being deported.[3] Many of the cases involving Japanese citizens, such as *Kiyoshi Hirabayashi v. United States* (1943),[4] *Ex Parte Mitsuye Endo*

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[1] Chang, Robert S. "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space." California Law Review *81, No. 5 (1993): 1252.*

[2] Findlaw.com, "U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=169&invol=649 (accessed Nov. 20, 2007).

[3] Chin, Gabriel J. **"**Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power." In *Immigration Stories*, edited by David Martin and Peter Schuck. New York: Foundation Press, 2005, p. 7.

[4] Findlaw.com, "Kiyoshi Hirabayashi v. United States, 320 U.S. 81 (1943)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=320&page=81 (accessed Nov. 20, 2007).

(1944),[5] *and Toyosaburo Korematsu v. United States* (1944),[6] addressed the concerns of East Asians as it pertained to the stereotypes of them as minorities unable to assimilate and, the perception that they are a threat to national security. It was feared that despite being Americanized for so long, perhaps they were more loyal to their home country. The failure to fully address East Asian needs in the U.S. is also seen in more recent cases, such as *Regents of the University of California v. Bakke* (1978), where quota systems on race were banned in college admissions while affirmative action systems were maintained. This inhibited many blacks and other minorities, such as East Asians, from opportunities of being admitted into colleges. Often the exclusion of certain groups in the college admissions process came with certain stereotypes about East Asians.

With the 40th anniversary of the Kerner Commission Report of 1968, one pertinent question would be: How have race relations improved since the initial publication of the report? Grace Tsuang has raised some legitimate issues regarding the fact there is still a long way to go in terms of improving the lot of minority peoples, particularly erasing the stereotypes of non-white ethnic groups, such as East Asians.[7] Tsuang argues that college administrators claim that Asians focus greatly on the sciences, only seek highly selective colleges, are not as well-rounded, and do not do as well on non-academic levels. Tsaung further states that these conclusions are perhaps based on racial stereotypes. Often we see similar patterns on stereotyping other ethnic groups, such as African-Americans, which inhibits the promise of equality throughout our legal and economic systems.

There is a paucity of literature examining the question of East Asian discrimination and the link with African Americans struggle for equality. However, this does not mean it does not exist.

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[5] Findlaw.com, "Ex Parte Mitsuye Endo, 323 U.S. 283 (1944)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=323&page=283 (accessed Nov. 20, 2007).

[6] Findlaw.com, "Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214 (accessed Nov. 20, 2007).

[7] Tsuang, Grace W. "Assuring Equal Access of Asian Americans to Highly Selective Universities." T*he Yale Law Journal* 98, No. 3 (1989): 663.

Much of the literature that focuses on East Asian Americans and Supreme Court cases examines the challenge to erase the stereotype of the "model minority" myth and bring to light that not all Asians have the same kind of work ethic. Many Americans have un-leashed violence due to their fears of East Asians taking away their jobs and that somehow they are different from the average American. Robert Chang also covers this topic.[8]

To relate the struggles of Asian Americans with those of African Americans one needs to examine the Civil Rights struggle. Many African Americans, inspired by such visionaries as Marcus Garvey and later Malcolm X within the black power movement, chose more direct confrontational tactics as a means of dealing with the demand for greater equality in this country, especially against the Jim Crow-era laws in the South. Other black communities preferred the more non-violent tactics of King and Gandhi, who advocated peaceful protests as a way of combating an oppressive system. In a similar vein, Asians carried on the struggle as well, yet, in a different fashion. The tactics utilized by Asians are those that were closer to King and Gandhi. Quintard Taylor explains that while blacks focused on confrontational tactics for greater economic freedoms, many Asians, particularly Japanese, looked inward and instead decided to cause change through success in business and achieving high scholarly activity, hoping that mainstream America would accept them in some way.[9]

The "model minority" idea of the hardworking East Asian was a difficult stereotype to overcome and often an inhibitor of Asian success in conquering many pre-conceived notions that portrayed East Asians as overachievers.[10] This myth was a result of their having to overcome many Americans' early suspicions of Asians, with their non-European customs and way of

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[8] Chang, Robert S. "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space." *California Law Review* 81, No. 5 (1993): 1254.

[9] Taylor, Quintard. "Blacks and Asians in a White City: Japanese Americans and African Americans in Seattle, 1890-1940." T*he Western Historical Quarterly* 22, No. 4 (1991): 403.

[10] William Petersen devised the model minority idea in the 1960s, which explained that despite East Asians being a small minority group, they were still able to achieve success. The term was first quoted by Peterson in William Petersen, "Success Story: Japanese American Style." *New York Times Magazine,* (9 January 1966), 20.

life and trying to fit in. Brest and Oshige note, the challenge of dispelling the "model minority" idea would help in ensuring that Asians also would benefit from affirmative action rulings handed down by the Supreme Court and would bring many Americans to an understanding that a number of Asians are, in fact, impoverished and in need of assistance for educational opportunities.[11] Brest and Oshige also note that including Asians in affirmative action admissions policies (as required by *Regents of the University of California v. Bakke*) would also be a plus, which is not under current Stanford Law School admissions criteria. The inclusion of Asians in affirmative action admission policies would help in promoting the idea that affirmative action is meant for all minorities, not only selected ones. Finally, Rhoda Howard-Hassmann explains that equal justice may also mean showing an apology for past ills through various measures, including a formal apology and some sort of subsidy for past wrongs; the Japanese were able to receive reparations much later after the war, as defined by the 1988 Civil Liberties Act, but the same should be said for African Americans as well, which is still forthcoming, even over 140 years after the end of slavery.[12]

East Asian Discrimination in Supreme Court Cases and Exclusionary Laws: A Lesson for All?

The Supreme Court has often dealt with shifting cycles of cases involving racial discrimination towards certain groups. These groups tend to shift with the changing times, as a new group is targeted at various intervals. There is always a scapegoat to blame in American history for the problems in this country. Frequently, we see issues such as the detention of Japanese Americans or those of African American descent as a result.[13] Normally, these are in times of crisis or in the midst of a war that

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[11] Brest, Paul, and Miranda Oshige. "Affirmative Action for Whom?" *Stanford Law Review* 47, No. 5 (1995): 855.

[12] Howard-Hassmann, Rhoda E. "Getting to Reparations: Japanese Americans and African Americans." *Social Forces* 83, No. 2 (2004): 823.

includes members of the supposed group to blame. American history has been known to repeat itself in many ways. As patterns of cases emerge over time, involving certain ethnic groups, our willingness to compromise the rights of others are revealed. This pointing of fingers, out of frustration, prejudice, or anxiety, has been projected upon minorities for decades and, Asian Americans are no exception to this form of discrimination. This group was targeted since the first wave of immigrants came to the United States in the mid-19th century, and this phenomenon ended with the end of World War II.

Through the theoretical framework of dispelling common stereotypes, such as the "yellow peril" and the "model minority" myth, both attributed to East Asians, the study of several Supreme Court cases and related exclusionary laws will yield insight as to how the rights of many persons, including East Asian Americans, have continually been denied or targeted throughout history. In tune with the 40th anniversary of the Kerner Commission Report, it remains a mystery as to when this kind of behavior will decline, or, if the American people will cease to find a scapegoat to blame their ills.

Since the first Chinese settlers came on ships from China to California during the Gold Rush era, there have been many examples of acts of discrimination against the Asian railroad worker. The Chinese Exclusion Act can be documented as a prime example of this during the 1880s. Many American workers involved in heavy industry, such as mining and low-end labor, viewed rising Chinese immigration as a threat. These feelings were especially common during the Railroad expansion era. In fact, there were sporadic instances of violence as an outgrowth of this new wave of immigration. Robert Chang states:

> …In 1877 in Chico, California…While attempting to burn down all of Chico's Chinatown, white arsonists murdered four Chinese by tying them up, dousing them with kerosene, and setting them on fire.

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[13] Findlaw.com, "Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214 (accessed Nov. 20, 2007).

> The arsonists were members of a labor union associated with the Order of Caucasians, a white supremacist organization that was active throughout California. The Order of Caucasians blamed the Chinese for the economic woes suffered by all workers.[14]

This type of violence, though for different reasons other than immigration, was reminiscent of the kind of terror that blacks faced in the South from white racist groups after the Civil War throughout the Jim Crow era. Biases towards minorities of all types were rampant and visible in the legal system. During these early Railroad years, the "yellow peril" was in full effect.[15] The case of *Chae Chan Ping v. United States* (1889) was a classic example, which demonstrated the prejudices that the Supreme Court held towards foreigners at the time. The opinion, expressed by Justice Field states:

> The major…questions…were whether any nation can exclude foreigners, and whether the treaties…gave those before the Court a vested right to re-enter… Justice Field, writing for a unanimous court, first outlined the treaties between the United States and China concerning immigration, and, with…Chinese laborers… by these treaties, observed: "[T] hey remained strangers in the land, residing…by themselves, and adhering to the customs…of their own country. It seemed impossible for them to assimilate…The people…saw…great danger that…our country would be overrun by them unless prompt action was taken to restrict their immigration." This is the genesis of the self-preservation theory as applied to the regulation of immigration-the theory of non-assimilable yellow hordes.[16]

Being inherently biased, any other types of immigrant applications had to get special permission from the Chinese government to enter the U.S. This shows the breadth of Chinese immigration at the time and the considerable impact this issue had on U.S.-China relations. Chinese who arrived after this time were considered permanent aliens and could not get full citizenship. Even Chinese living in the

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[14] Chang, 1252.

[15] The term, "yellow peril," originated from Kaiser Wilhelm around 1895 and was later adopted by Western journalists to refer to the immigration of Chinese laborers to Western countries. It was later attributed to the Japanese during their military expansion. For further reading see David Walker, *Anxious Nation: Australia and the Rise of Asia 1850-1939.* (Saint Lucia: University of Queensland Press, 1999), 30.

[16] Hesse, Siegfried. "The Constitutional Status of the Lawfully Admitted Permanent Resident Alien: The Pre-1917 Cases." *The Yale Law Journal* 68, No. 8 (1959): 1588.

U.S. had to get permission for re-entry if they ever left the country. The Chinese Exclusion Act of 1882 states:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.[17]

The 1893 Geary Act expanded the Chinese Exclusion Act and included more restrictions on Chinese Americans. A provision, such as carrying a resident permit at all times, was enacted and those violating this provision were met with harsh punishment involving labor or deportation. Despite there being three dissenting opinions, *Fong Yue Ting v. United States* (1893) upheld this act with Justice Gray delivering the opinion of the Court .[18] Nevertheless, East Asian Americans faced a long road ahead, much like blacks did in the early days following the Civil War's end.

What is interesting about the Chinese population is that even Justice John Marshall Harlan, the dissenter in the *Plessy v. Ferguson* (1896) decision, raised questions about the importance of addressing the ambiguity of the Chinese citizenship issue during the 1800s, showing that defining minority rights were more than simply black and white matters and remained complex and hard to define for years to come. Justice Harlan explained the paradox of such a hypocritical policy of allowing Chinese some opportunities, yet excluding blacks in other situations. His dissenting opinion states:

> There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman

[17] U.S. Congress. *Chinese Exclusion Act*, 47th Cong., 1st sess., 1882, chap. 126.

[18] Chin 7.

> can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.[19]

Such issues still remained puzzling for many persons trying to find a solution to the status of Chinese and other East Asians in this country. The customs, culture, religion, and way of life of the East Asian were so dramatically different from other populations residing in the country that it led to common misguided stereotypes. This made it easier to subject them to discriminatory laws, since they essentially remained an "other" to most people in this country at that time. This uncomfortable unfamiliarity permitted laws, such as the Chinese Exclusion Act, to pass without much objection. This occurred because the Chinese did not seem to "belong" in any sense to the ideal of American values.

One case that tested the strength of the Chinese Exclusion Act and citizenship was *US v. Wong Kim Ark* (1898). Wong Kim Ark was a U.S. citizen born in San Francisco, whose parents were from Taishan, China, and were not American citizens. During his childhood, his family moved back to China and, he traveled between the U.S. and China. During one occasion, upon a return to the U.S., he was detained in San Francisco and deemed not to be a citizen. The charges against him were that he and his parents were both subjects of the Chinese emperor. At the time, it was believed he should be denied entrance because he fell under the umbrella of the Chinese Exclusion Act, which forbade persons of Chinese ancestry from immigrating into the United States. Because of territorial disputes with China during that time period, the U.S. had took issue with allowing immigrants from enemy states into the country. In addition, many minority populations were discriminated against because of their outward appearance and differing customs and culture, which were distinct from

[19] Christopher Waldrep Homepage, San Francisco State University, "Plessy v. Ferguson," San Francisco State University, http://bss.sfsu.edu/waldrep/hist471/plessy_v.htm (accessed Nov. 20, 2007).

Europeans. The Chinese Exclusion Act reflected this racial bias. However, the Court ruled 8-2 and based its decision on the 14th Amendment. The reasoning of the Court was, because Wong was born in the United States and was a citizen, he could be exempt from the conditions under the 1882 Act itself. Wong was still a citizen thereafter, and had to be granted access to the country. Justice Gray delivered the Court's opinion:

> It is conceded that, if he is a citizen of the United States, the acts of congress known as the 'Chinese Exclusion Acts,' prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him…The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment of the constitution: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.'[20]

During an early part of Wong's life, his parents maintained and conducted business in the United States. This made him highly eligible for citizenship, yet discrimination towards East Asian Americans continued afterward. This is evident in the minority opinion expressed by Justice Fuller, which states: Chinese immigrants and their children cannot become U.S. citizens under the Fourteenth Amendment. This rationale was based on the precedent set by the previous case of case of *Fong Yue Ting v. U.S.* (1893), which stated that "large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing…by themselves,…adhering to the customs…of their…country," did not assimilate well and might "endanger good order, and be injurious to the public interests and that "according to…their native government and…this government, are and must remain aliens."[21]

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[20] Findlaw.com, "U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=169&invol=649 (accessed Nov. 20, 2007).

Based on this thinking, Wong Kim Ark never had citizenship rights and the district court's ruling was reversed.[22]

In addition to Chinese Americans, Japanese Americans were also continually challenged in the exclusion of East Asian individuals. *Takao Ozawa v. United States* (1922) was heard on a writ of certiorari. The facts of this case involved a Japanese man who tried to challenge the Supreme Court on the basis of race. Ozawa tried to prove that Japanese were indeed Caucasian, thus allowing them access to becoming naturalized citizens. He actually filed for naturalization under the 1906 Naturalization Act, which allowed only Caucasians and persons of African descent to become naturalized. Instead of challenging the restrictions constitutionally, he merely sought to have the category Japanese classified as white. The Court rejected this argument and stated that Japanese were not Caucasian in any sense. Instead, the Court was of the opinion that Japanese were of an "unassimilable" race and did not qualify for anything under the Naturalization Act.[23] The case merely strengthened anti-East Asian bias to this group in the U.S., which confirmed more racist U.S. immigration laws. These laws extended to other East Asian groups as well. Paralleling the denial of civil rights to blacks, many East Asians had problems getting equal protection throughout the country, as was shown in Seattle between the years of 1890 to 1940, as Quintard Taylor explains:

> …Each community held contrasting ideas of the appropriate responses to discrimination. African Americans voiced concern for economic opportunity and the end of formal discrimination —the "campaign for human dignity," to use the typical NAACP characterization during the interwar years. Japanese Americans, while aware of discrimination and its impact on their economic progress, chose to wage their campaign for human dignity with entrepreneurial success and stellar academic achievement, and repudiated the confrontational tactics associated with African American civil rights organizations.[24]

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[21] Chin, 7.

[22] Ibid.

Japanese suppression occurred particularly during World War II, due to fear of collaboration with the enemy. The case of *Yasui v. United States* (1943) determined that curfews against citizens were permissible. This tactic was used to restrict the rights of Japanese Americans during World War II. Yasui was an American-born Japanese from Hood River, Oregon, who joined the U.S. Reserve and later worked for the Japanese Consulate. After 1941, he resigned from the consulate following the Pearl Harbor attack and was later reassigned to an internment camp. He decided to test a militarily imposed curfew for Japanese Americans on March 28, 1942. Yasui presented himself to a police station after eleven p.m. to deliberately challenge the constitutionality of this law. The lower court ruled that the curfew only applied to aliens, since martial law was not ordered in the area by the government. However, because he worked for the Japanese government through the consulate office, he automatically gave up his citizenship and was thus subject to the curfew restrictions and given a one-year sentence and a five-thousand-dollar fine:

> After the Japanese bombed Pearl Harbor…Yasui resigned… to report for military duty. His services were refused nine times. In February 1942 Yasui set up a law firm in Portland to help Japanese Americans deal with legal problems the war created. Amid talk of internment, Yasui, the only Japanese American lawyer in Oregon, planned his legal challenge to the government's policies…His case was tried in district court. In November 1942 Judge James Fee agreed with Yasui's contention that the curfew was illegally applied to citizens but…stripped Yasui of…citizenship and sentenced him. In 1943 his case was sent…from district court to the…Supreme Court, which reversed Judge Fee's ruling that the curfew was unconstitutional, reinstated Yasui's citizenship, and reduced his sentence.[25]

The case made it to the Supreme Court and was decided jointly with *Hirabayashi v.*

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[23] Findlaw.com, "Takao Ozawa v. U S, 260 U.S. 178 (1922)," Findlaw.com, http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=260&invol=178 (accessed Nov. 20, 2007).

[24] Taylor, 403.

[25] Oregon Historical Society, "Minoru Yasui," Oregon History Project, http://www.ohs.org/education/oregonhistory/Oregon-Biographies-Minoru-Yasui.cfm (accessed Nov. 20, 2007).

United States (1943), where the Court ordered that the curfew and special exclusions were legal. This ruling thus concluded that Yasui's actions merited his citizenship status being taken away, and he was re-sentenced.

The parallel Hirabayashi case dealt with a similar issue of a ban on certain unauthorized persons entering military areas. This ban was immediately passed following the attack on Pearl Harbor. Hirabayashi was a student at the University of Washington who apparently violated a curfew and, after curfew, did not report for relocation, as was required of Japanese Americans at the time. The Court upheld the conviction, deciding that certain minorities could have militarily-imposed curfews in wartime. This was deemed necessary at times, particularly if the war involved the person's country of native origin. Justice Stone read the opinion of the court, which stated:

> Distinctions between citizens…because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection…We may assume that these considerations would be controlling here were it not…that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas. Because racial discriminations are in most circumstances irrelevant and therefore prohibited, it…follows that, in dealing with the perils of war, Congress and the Executive are…precluded from taking into account those facts and circumstances which are relevant…for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others…The adoption by Government, in…war and of threatened invasion, of measures for the public safety, based upon…facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not… beyond the limits of the Constitution and…not…condemned merely because in other and in most circumstances racial distinctions are irrelevant.[26]

This opinion of the court simply solidified the negative view of Americans towards persons of East Asian descent. In many ways, this could be compared to the illegal detainment of blacks in the South

[26] Findlaw.com, "Kiyoshi Hirabayashi v. United States, 320 U.S. 81 (1943)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=320&page=81 (accessed Nov. 20, 2007).

during the Civil Rights crusade.

The case of *Korematsu vs. United States* (1944) is another example, which shows the discrimination against the Japanese during World War II. Korematsu refused to report to one of the camps designated for Japanese Americans in World War II. The U.S. government feared that many Japanese Americans were collaborating with Japan, especially since the Pearl Harbor attack. A large population of Japanese-Americans resided in California and, because they were so close to the coast, they feared that this population was not properly assimilated and needed to be dealt with accordingly. Justice Black delivered the Court's opinion:

> Like curfew, exclusion of those of Japanese origin was…necessary because of… disloyal members of the group, most of…whom…were loyal to this country. It was because we could not reject the…military authorities that it was impossible to bring…segregation of the disloyal from the loyal that we sustained the validity of the curfew…as applying to the whole…Temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was…group punishment based on antagonism to those of Japanese origin…There were members…who retained loyalties to Japan… Approximately five thousand…citizens of Japanese ancestry refused… unqualified allegiance to the United States and to renounce…the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.[27]

There was obvious bias against them because they were yellow-skinned and had small eyes, making them different from the majority American population. They could easily be identified and herded into camps with such distinguishing characteristics. During wartime, such restrictions were deemed valid because of the overall threat to national security. The Kerner Commission would conclude that this indeed was a gaping inequality that was not addressed until much later and, giving reparations to Japanese families more than forty years after the fact, with the passage of the Civil Rights Act of 1988, shows that the government still has a long way to go in addressing equal treatment of persons.

[27] Findlaw.com, "Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=323&invol=214 (accessed Nov. 20, 2007).

Rhoda Howard-Hassman asks the very question that if Japanese-Americans can receive some benefits, why have not African-Americans?

> The horrors of slavery, the appalling segregation and violence of the Jim Crow era, and the continued discrimination since the 1964 Civil Rights Act are well known. One might ask why, if the facts are known, cannot African Americans received reparations? After all, Japanese Americans received reparations for their internment during the Second World War, a much shorter period of oppression with effects that, however tragic and immoral, affected far fewer people and to a much less harmful degree.[28]

Another case that was decided towards the end of World War II was *Ex Parte Endo* (1944). A Japanese American woman, Mitsuye Endo, was forced from Sacramento to a relocation camp and lost her job as a stenographer. She filed for habeas corpus to challenge her case. The court directly avoided the question of the constitutionality of her detention. Instead, the Court offered to release her outside of the West Coast area to avoid any conflict. Ms. Endo refused the offer and stayed confined for another two years while pursuing her case. The justices opined that Japanese could not be confined unless disloyalty was proven. The Court determined this issue to be more or less racist, and thousands of Japanese Americans were finally released. Justice Murphy provided a reasonable explanation in his concurring opinion, stating:

> I join in the opinion of the Court, but I am of the view that detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. As stated more fully in my…dissenting opinion in Fred Toyosaburo Korematsu v. United States,…racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people.[29]

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[28] Howard-Hassmann, 823.

[29] Findlaw.com, "Ex Parte Mitsuye Endo, 323 U.S. 283 (1944)," Findlaw.com, http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=323&page=283 (accessed Nov. 20, 2007).

The aforementioned case involved a female and, furthermore, was deemed special because of her gender. Her case was heard as a result of questions relating to the 14th amendment and not directly from the detention itself. Unfortunately, releasing many Japanese after the fact could not make up for the suffering, losses, and other stresses faced by this population due to such discriminatory policies. The Court also did not help itself by waiting until the late 1980s to order the pay back of reparations to the affected families, as explained previously by Howard-Hassmann.[30]

Moving from the "yellow peril" to the present-day idea of the "model minority," this policy of targeting certain ethnic groups can be applied in recent times, and shows that the events of reconciling past ills (such as excluding certain groups) only happened after the fact and shows need for improvement. To illustrate the aforementioned statement, an examination of cases relating to college admissions is appropriate. In elite schools such as Stanford Law School, many East Asian families could not even be classified under affirmative action because of the stereotype of the "model minority" myth. As Brest and Oshige note:

> Like many other law schools, Stanford seeks a student body that is both highly qualified and diverse in terms of culture, background, work and life experience, skills, and interests. In addition to using these amorphous criteria of diversity, the school has an affirmative action program that seeks to include the members of specified minority groups…Asian Americans are not included in the Law School's affirmative action program. They account for about 9 percent of the student body, and the number seems on the increase.[31]

The problem remains that many preconceived stereotypes of East Asians exist under the model minority idea. These beliefs have been compounded by deep-seated racial prejudices that grew out of an early American psyche towards Asians as overachievers, which created the perception that East Asians were certainly not in need of any "assistance" in obtaining admission into schools. To

[30] Howard-Hassmann, 823.

[31] Brest and Oshige, 855.

further complicate the issue was the 1978 *Regents of the University of California v. Bakke* case, where race quota systems were forbidden in college admissions while still maintaining a system of affirmative action. This inhibited many blacks and other minorities, such as East Asians, from opportunities of being admitted into colleges. Often the exclusion of certain groups from college admissions came with certain stereotypes about East Asians. Grace Tsuang notes here the common misconceptions presented about East Asians. Misconceptions, such as those held by college administrators, helped to contribute to such admissions criteria:

> Some university officials argue that while Asian Americans score high on academic ratings, they perform less well on personal ratings. According to these administrators, Asian candidates tend to concentrate in the sciences or seek admissions to highly selective programs, are less well rounded, and generally score lower on non-academic qualifications. Each of these claims is based on questionable racial stereotypes.[32]

Based on these difficulties, the Kerner Commission would truly be disappointed to know that today we still have such milestones to overcome, which include developing more inclusive affirmative action measures for all minority groups.

The Supreme Court has been tested over time, with a continuing evolution of cases, ushering in new challenges and unfamiliar populations that have not been addressed before. The country has historically made adjustments according to shifts in public opinion, with East Asians being no exception. No matter the time period, there will always be something amiss in the public eye, an issue that angers them and makes them wanton to target someone for their strife. America is a melting pot of sorts. However, when certain minority populations suddenly face the possibility of becoming targets because of historical events or unfortunate circumstances involving only a minute sample from similar religious sects or ethnic backgrounds, the rest of that group must bear the burden of possible unfair legislation. This is true, especially in times of war.

[32] Tsuang, 663.

The exclusion of Chinese persons and the detention of Japanese Americans in World War II were merely a few examples in this paper, but, today we still face the struggle of correcting some of the wrongs we committed, not only to African Americans during the Civil Rights era and beyond, but now to the impending realization that companies have revealed evidence of justification for reparations involving insurance policies taken out by major corporations against former slaves.

Will we continue to deny due process to minority populations and simply cover up the past wrongdoings of politicians and justices in our legal system? Has the 40th anniversary of the Kerner Commission revealed improvements to our legal and economic system in promoting greater equality? Unfortunately, with such wide diversity of political opinion of the U.S. population, bigotry will continue to slip through the cracks in our legal system, and unfair targeting of minorities will continue as long as hate still survives in the country. Hasty decisions, for example, will still be driven to excess by ideologues in the heat of the moment, reducing some persons' rights, as issues regarding national security has shown. Hopefully, we can restrict any of these policies from developing into major Supreme Court cases or policies that must be overturned later, only after heartache and millions of dollars are delved out to impacted families as before. The major danger is that these restrictions have only repeated themselves over time and, there is no trend to continue finding legal loopholes or special ways of denying due process when it is felt to be necessary.

If America wants to become a true melting pot, it will find a way to incorporate the values of other societies, instead of just our own. The Kerner Commission's mission was to call for equal justice for all races, to discover the source of racial barriers, and to promote greater opportunity for all minority groups fairly. Realizing this dream of a melting pot will not stifle Americans, but will lead to growth and appreciation of other cultures for their diversity. This takes education on our part, but also willingness to work with concerned groups when major events do happen, before further damage can be done. Diversity councils can work with community groups and, in order for Americans to remain

sensitive to all persons, vision would assist this effort. In fact, if legal safety mechanisms are utilized to incorporate all persons and reduce the special wartime exemptions against restricting freedoms and those involving issues of national security, we may be able to begin to see the light at the end of the tunnel to true freedom on the other side.

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